

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

ELI LILLY AND COMPANY,)	
Plaintiff,)	
)	
vs.)	1:06-cv-1017-SEB-JMS
)	
TEVA PHARMACEUTICALS USA, INC.,)	
Defendant.)	

ENTRY ON MOTION TO COMPEL

This matter is before the magistrate judge on Eli Lilly and Company's ("Lilly") Motion to Compel Teva to Produce Its Drug Master File and For Sanctions (Dkt. # 368). The motion is fully briefed, and being duly advised, the Motion to Compel is **DENIED AS MOOT**, and the Motion for Sanctions is **DENIED**, for the reasons set forth below.

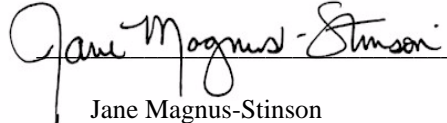
Lilly moved to compel Teva to produce the Drug Master File ("DMF") for its raloxifene hydrochloride. On January 16, 2009, Lilly received the DMF from Interchem Corporation ("Interchem"), the U.S. agent for Erregierre, Teva's third-party supplier of the active pharmaceutical ingredient in Teva's raloxifene tablets. Therefore, Lilly's motion to compel is moot. However, Lilly maintains its request for sanctions against Teva for failing to timely produce the DMF.

Teva does not have control of the DMF, and Lilly's arguments to the contrary are unconvincing. Teva provided Lilly with those documents in its possession, and made reasonable efforts to assist Lilly in obtaining the entire DMF from Erregierre. Lilly received portions of the DMF, including some redacted pages, several months ago in response to a subpoena Lilly served upon Erregierre/Interchem. Lilly clearly had the ability to move to enforce the subpoena as to

any missing production. It chose not to do so and instead filed the motion to compel Teva to produce the DMF. Ultimately, Interchem produced the DMF. The Court does not find that any conduct on the part of Teva warrants the imposition of sanctions, particularly given that the document sought was not Teva's. Therefore, Lilly's motion for sanctions is denied.

SO ORDERED.

01/27/2009



Jane Magnus-Stinson
United States Magistrate Judge
Southern District of Indiana

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